

Federal Communications Commission

DA 99-269

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)

) Amendment of Section 73.202(b),
) Table of Allotments,
) FM Broadcast Stations.
)

(Pitkin, Louisiana))

MM Docket No. 99-26
RM-9436

(New Castle, Colorado))

MM Docket No. 99-27
RM-9437

(Olathe, Colorado))

MM Docket No. 99-28 ✓
RM-9438

(Walden, Colorado))

MM Docket No. 99-29
RM-9439

(Aberdeen, Idaho))

MM Docket No. 99-30
RM-9443

(Palisade, Colorado))

MM Docket No. 99-31
RM-9444

(Rye, Colorado))

MM Docket No. 99-32
RM-9445

(Burdett, Kansas))

MM Docket No. 99-33
RM-9453NOTICE OF PROPOSED RULE MAKING

Adopted: January 27, 1999;

Released: February 5, 1999

Comment Date: March 29, 1999

Reply Comment Date: April 13, 1999

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a multiple docket Notice of Proposed Rule Making setting forth separate proposals to amend the FM Table of Allotments, Section 73.202(b) of the Rules. Each petitioner has stated that it will apply for its requested channel, if allotted. We believe that each proposal warrants consideration because it complies with our technical requirements and would serve the public interest.

2. This is a multiple docket Notice of Proposed Rule Making issued in response to a Commission Public Notice released October 2, 1998 (DA 98-1987). We are combining separate FM allotment proposals into a single Notice of Proposed Rule Making. Each proposal has its own docket and rule making number and the Commission's Reference Center will maintain a separate file for each docket. As discussed in the Public Notice, this procedure will conserve Commission resources and expedite the processing of FM allotment petitions for rule making by avoiding duplicative actions. We request comments and/or counterproposals to the following proposals:

A. MM Docket No. 99-26; RM-9436

Petitioner: Panther Broadcasting of Louisiana

c/o Henry E. Crawford, Esq.
1150 Connecticut Avenue, N.W.
Suite 900
Washington, DC 20036-4192

Proposal: Allot Channel 285A to Pitkin, Louisiana, as that community's first local aural transmission service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Pitkin, Louisiana	--	285A

Coordinates: 30-56-06 NL; 92-56-12 WL

Additional Information: This proposal requires no site restriction. As Pitkin is not incorporated nor listed in the U.S. Census, the proponent must demonstrate its community status. This may be proven by the testimony of local residents or by objective or subjective evidence indicating the existence of a community. See Beacon Broadcasting, 2 FCC Rcd 3469 (1987); aff'd, 2 FCC Rcd 7562 (1987). Some examples of objective indications of community status include the existence of political, social, economic, commercial, cultural, or religious organizations and services in the community. See Kenansville, Florida, 5 FCC Rcd 2663 (Policy and Rules Div. 1990), aff'd, 10 FCC Rcd 9831 (1995). Petitioner is requested to provide

additional information regarding the attributes of Pitkin, Louisiana, consistent with the above guidelines.

FCC Contact: Nancy Joyner, (202) 418-2180.

B. MM Docket No. 99-27; RM-9437

Petitioner: Mountain West Broadcasting

c/o Victor A. Michael, Jr.
6807 Foxglove Drive
Cheyenne, Wyoming 82009

Proposal: Allot Channel 233A to New Castle, Colorado, as that community's first local commercial FM transmission service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
New Castle, Colorado	--	233A

Coordinates: 39-34-12 NL; 107-31-54 WL

Additional Information: The proposed allotment requires no site restriction.

FCC Contact: Nancy Joyner, (202) 418-2180.

C. MM Docket No. 99-28; RM-9438

Petitioner: Mountain West Broadcasting

c/o Victor A. Michael, Jr.
6807 Foxglove Drive
Cheyenne, Wyoming 82009

Proposal: Allot Channel 270C2 to Olathe, Colorado, as that community's first local aural transmission service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Olathe, Colorado	--	270C2

Coordinates: 38-36-18 NL; 107-58-54 WL

Additional Information: The proposed allotment requires no site restriction.

FCC Contact: Nancy Joyner, (202) 418-2180.

D. MM Docket No. 99-29; RM-9439

Petitioner: Mountain West Broadcasting

c/o Victor A. Michael, Jr.
6807 Foxglove Drive
Cheyenne, Wyoming 82009

Proposal: Allot Channel 231C2 to Walden, Colorado, as that community's first local aural transmission service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Walden, Colorado	--	231C2

Coordinates: 40-41-54 NL; 106-29-48 WL

Additional Information: The proposed allotment requires a site restriction 18.5 kilometers (11.5 miles) west to avoid a short-spacing to cut-off applications filed for Channel 232C3 at Wellington, Colorado.

FCC Contact: Nancy Joyner, (202) 418-2180

E. MM Docket No. 99-30; RM-9443

Petitioner: Mountain West Broadcasting

c/o Victor A. Michael, Jr.
6807 Foxglove Drive
Cheyenne, Wyoming 82009

Proposal: Allot Channel 258C2 to Aberdeen, Idaho, as that community's first local aural transmission service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Aberdeen, Idaho	--	258C2

Coordinates: 43-00-27 NL; 112-41-54 WL

Additional Information: The proposed allotment requires a site restriction 13.5 kilometers (8.4 miles) northeast of the community to avoid a short-spacing to Station KZDX(FM), Channel 260C, Burley, Idaho.

FCC Contact: Nancy Joyner, (202) 418-2180

F. MM Docket No. 99-31; RM-9444

Petitioner: Mountain West Broadcasting

c/o Victor A. Michael, Jr.
6807 Foxglove Drive
Cheyenne, Wyoming 82009

Proposal: Allot Channel 295C3 to Palisade, Colorado, as that community's first local aural transmission service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Palisade, Colorado	--	295C3

Coordinates: 39-07-54 NL; 108-22-37 WL

Additional Information: The allotment proposal requires a site restriction 3.4 kilometers (2.1 miles) northwest of the community to avoid a short-spacing to KSTR-FM, Channel 241C, Montrose, Colorado.

FCC Contact: Nancy Joyner, (202) 418-2180

G. MM Docket No. 99-32; RM-9445

Petitioner: Mountain West Broadcasting

c/o Victor A. Michael, Jr.
6897 Foxglove Drive
Cheyenne, Wyoming 82009

Proposal: Allot Channel 285A to Rye, Colorado, as that community's first local commercial FM transmission service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Rye, Colorado	--	285A

Coordinates: 37-55-18 NL; 104-55-48 WL

Additional Information: The proposed allotment does not require a site restriction.

FCC Contact: Nancy Joyner, (202) 418-2180

H. MM Docket No. 99-33; RM-9453

Petitioner: Dana Puopolo
c/o Dana J. Puopolo *Pro se*
37 Martin Street
Rehoboth, MA 02769-2103

Proposal: Allot Channel 228A to Burdett, Kansas, as that community's first local aural transmission service.

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Burdett, Kansas	--	228A

Coordinates: 38-11-30 NL; 99-31-30 WL

Additional Information: The proposed allotment does not require a site restriction. Although petitioner's request was signed and an address provided, an affidavit verifying that the statements contained in the petition are accurate to the best of the petitioner's knowledge was not included. Section 1.52 of the Commission's Rules requires that the original of any document filed with the Commission by a party not represented by counsel shall be signed and verified by the party and his/her address stated. In the absence of such verification, the petition may be dismissed. Section 1.401(b) of the Commission's Rules concerning rule making proceedings places petitioners on notice that their proposal must conform with the requirements of Section 1.52 regarding subscription and verification. Therefore, petitioner is requested to correct this omission in supporting comments.

FCC Contact: Nancy Joyner, (202) 418-2180

3. Comments, reply comments, counterproposals and other pleadings filed in response to this multiple docket Notice of Proposed Rule Making should reference **only** the specific docket to which the filing pertains. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required in paragraph 2 of the Appendix before a channel will be allotted.

4. Interested parties may file comments on or before March 29, 1999, and reply comments on or before April 13, 1999, and are advised to read the Appendix for the proper procedure. Additionally, a copy of any filing should be served on the petitioner listed for the particular docket.

5. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to a rule making proceeding to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Section 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules. 46 FR 11549 (February 9, 1981).

6. For further information concerning a proceeding listed above, contact the FCC contact listed for that proceeding. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision in the applicable docket is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or any summary of any new information shall be served by the person making the presentation upon the other parties to the proceeding in particular docket unless the Commission specifically waives this service requirement. Any comment which has not been

served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's

Rules.) Comments should be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W.; TW-A325, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239) at its headquarters, 1919 M Street, N.W., Washington, D.C.